IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8179 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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FATMABIBI WD/O ABDUL SALAM RASUL OZA

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 8179 of 2004

MR MA KHARADI for Petitioner No. 1-5

GOVERNMENT PLEADER for Respondent No. 1-3

MR CJ VIN for Respondent No. 4

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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 17/08/2004

ORAL JUDGEMENT

Rule. Shri C.J.Vin, Learned Advocate waives service of rule for respondent no.4. Shri Kunjal Pandya,

Learned AGP waives service of rule for respondent no.1 to 3.

2. In this petition under Article 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order dated 31.3.2004/25.6.2004 passed by the Secretary (Appeals), Revenue Department, State of Gujarat passed in Revision Application No.1 of 2003 in partly allowing the same and quashing and setting aside the order passed by the Collector, Dahod dated 20.12.2002 and confirming the order passed by the Deputy Collector, Dahod dated 9.7.2001.

3. The respondent no.4 and his mother were the owners of the land in question i.e. land bearing R.S.No.306 of Dahod Kasba admeasuring 6 acres and 16 gunthas and also 3 gunthas of Kharaba land, in all 6 acres and 19 gunthas of land. It is the case of the petitioners that they have purchased the said land from the respondent no.4 and his mother - original land owner on 8.1.1980 by registered sale deed and possession was handed over to them. The necessary entries to that effect being Entry No. 12230 and subsequent entry no. 15638 and 15639 to that effect also came to be made in the record of rights.

4. It seems that being aggrieved and dissatisfied with the said entries, the respondent no.4 herein preferred appeal before the Deputy Collector, Dahod being RTS Appeal No.40 of 2000. The Deputy Collector, Dahod by his judgment and order dated 19.7.2001 allowed the said appeal setting aside both the entries No.12230, 15638 and 15639 by holding that transfer of the land was hit by the provisions of Section 73-A of the Bombay Land Revenue Code as the respondent no.4 holding the land was a Adivasi who has transferred the land in favor of non-adivasi.

5. Being aggrieved and dissatisfied with the judgment and order dated 9.7.2001 passed by the Deputy Collector, Dahod in RTS Appeal No.40 of 2000, the petitioners preferred Revision Application before the Collector, Dahod which was numbered as RTS Revision Application No.42 of 2001. It was submitted on behalf of the petitioners that considering the fact that survey settlement was already done with regard to the land in question and the area in question and therefore, the provision of Section 73-A would not be applicable and accordingly, the Collector by his judgment and order dated 20.12.2002 allowed the said revision application

and by quashing and setting aside the order passed by the Deputy Collector, Dahod dated 19.7.2001.

6. Being aggrieved and dissatisfied with the same, the respondent no.4 herein - original land owner preferred Revision Application before the Secretary (Appeals), Revenue Department, State of Gujarat who by judgment and order dated 31.3.2004 partly allowed the said revision application and by quashing and setting aside the judgment and order passed by the Collector, Dahod dated 20.12.2004 and confirming the order passed by the Deputy Collector, Dahod dated 9.7.2001. Being aggrieved and dissatisfied with the impugned judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 31.3.2004 passed in Revision Application No.1. of 2003, the petitioners have preferred the present Special Civil Application under Article 226 and 227 of the Constitution of India.

7. Shri M.A.Kharadi, Learned Advocate for the petitioners has submitted that number of submissions were made on behalf of the petitioners before the Learned Secretary (Appeals), inclusive of that in view of the survey settlement done under the provisions of the Bombay Land Revenue Code, the provisions of Section 73-A of the Bombay Land Revenue Code were not applicable and a Government notification dated 4.4.1961 was also produced. He has further submitted that in fact, there was a specific finding given by the Collector in its order dated 20.12.2002 that so far as the area in question is concerned in view of the survey settlement, the provisions of Section 73-A of the Bombay Land Revenue Code were not applicable. Inspite of the aforesaid facts, the Revisional Authority has partly allowed the revision application and quashed and set aside the order passed by the Collector, Dahod without giving any finding whether the provisions of Section 73-A were applicable or not with regard to the land in question.

8. Shri C.J.Vin, Learned Advocate has however tried to support the judgment and order of the Revisional Authority. He has submitted that considering the fact that transfer was between Adivasi and non-adivasi and in view of the fact that civil suits were pending before the Civil Court, the Revisional Authority was justified in partly allowing the revision application and quashed and set aside the order passed by the Collector, Dahod.

9. Heard the Learned Advocates on behalf of the parties.

10. The Collector, Dahod in his order date 20.12.2002 has in fact given the specific finding that in view of the survey settlement and considering the Government Resolution dated 4.4.1961, the provisions of Section 73-A were not applicable with regard to the land in question and on that basis, the Collector allowed the Revision application. The Revisional Authority i.e. Secretary (Appeals) without giving any finding and discussing whether the provisions of Section 73-A were applicable were not with regard to the land in question and that is the basis on which the Collector remanded the order passed by the Deputy Collector. Still the Secretary (Appeals) has not decided and not given any finding. Under the circumstances, by quashing and setting aside the judgment and order passed by the Secretary (Appeals), the matter is required to be remanded to him for deciding the question whether the provisions of Section 73-A of the Bombay Land Revenue Code were applicable or not with regard to the land in question, more particularly, the day on which the transaction took place.

11. For the reasons stated above, the present Special Civil Application is allowed. The judgment and order passed by the Revisional Authority i.e. Secretary (Appeals) dated 31.3.2004 passed in Revision Application No.1 of 2003 is quashed and set aside. The mater is remanded to the Secretary (Appeals), Revenue Department, State of Gujarat for deciding the Revision Application No.1 of 2003 afresh and to give a specific finding whether with regard to the land in question the provisions of Section 73-A were applicable or not in view of the survey settlement, if any and the Government Resolution dated 4.4.1961, more particularly, the day on which the transaction has taken place. Such an exercise is required to be done within three months from the date of receipt of this order. Rule is made absolute with no order as to costs.

(M.R.Shah, J)
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